

SHOPPING CENTER LEASE

THIS SHOPPING CENTER LEASE ("LEASE") is dated as of March 5, 2019 ("Effective Date"), and entered into by and between **CITY OF BUCKEYE, ARIZONA**, an Arizona municipal corporation ("Landlord"), and **ARIZONA WATER COMPANY**, an Arizona corporation ("Tenant").

ARTICLE I

FUNDAMENTAL LEASE PROVISIONS

THE FOLLOWING FUNDAMENTAL LEASE PROVISIONS ARE A PART OF THIS LEASE, BUT DO NOT CONSTITUTE THE ENTIRE LEASE. TENANT ACKNOWLEDGES THAT IT HAS READ ALL OF THE PROVISIONS CONTAINED IN THE ENTIRE LEASE AND ALL EXHIBITS WHICH ARE A PART THEREOF AND AGREES THAT THIS LEASE, INCLUDING THE FUNDAMENTAL LEASE PROVISIONS AND ALL EXHIBITS, REFLECTS THE ENTIRE UNDERSTANDING AND REASONABLE EXPECTATIONS OF LANDLORD AND TENANT REGARDING THE PREMISES. TENANT ALSO ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO REVIEW THIS LEASE WITH LEGAL COUNSEL AND SUCH OTHER ADVISORS AS TENANT DEEMS APPROPRIATE PRIOR TO EXECUTION.

A:	SHOPPING CENTER (the "Center")	Sundance Crossings, located at the Southwest corner of Dean and Yuma Roads, Buckeye, Maricopa County, Arizona 85326
B:	LANDLORD:	The City of Buckeye, Arizona, an Arizona municipal corporation
C:	LANDLORD'S ADDRESS: [For payment of Rent and Legal Notice]:	City of Buckeye 530 East Monroe Avenue Buckeye, AZ 85326 Attn: Roger Klingler, City Manager
D:	TENANT:	Arizona Water Company, an Arizona corporation
E:	TENANT'S TRADE NAME:	None
F:	TENANT'S ADDRESS: [For Legal Notice]:	Arizona Water Company 3805 North Black Canyon Highway Phoenix, Arizona 85015 Attn: President

OR

Arizona Water Company
Post Office Box 29006
Phoenix, Arizona 85038-9006
Attn: President

- G: USE: The premises shall be used and occupied solely for general public water utility office, and other legal uses permitted by current zoning ordinances for the Center.
- H: LEASEHOLD IMPROVEMENT ALLOWANCE N/A
- I: SPACE NUMBER/ADDRESS: Building C, Suites #105
- J: SQUARE FOOTAGE: Approximately 1,168 rentable square feet
- K: PERCENT OF CENTER: 1.8%
- L: LEASE TERM: Three (3) years, plus two one year extensions at the option of Tenant, to be exercised as provided in Section 3.2
- M: COMMENCEMENT DATE: Upon pulling of building permits by Tenant.
- N: MINIMUM ANNUAL RENT:

<u>Years</u>	<u>P.S.F.</u>	<u>Monthly</u>	<u>Annually</u>
Year 1	\$15.50 plus CAM	\$1,508.67	\$18,104
Year 2	\$15.50 plus CAM	\$1,508.67	\$18,104
Year 3	\$16.00 plus CAM	\$1,577.33	\$18,688

Option Period(s):

<u>Years</u>	<u>P.S.F.</u>	<u>Monthly</u>	<u>Annually</u>
Year 1	\$16.00 plus CAM	\$1,577.33	\$18,688
Year 2	\$16.50 plus CAM	\$1,606	\$19,272

- O: PERCENTAGE RENT: N/A
- P: RENEWAL OPTION(S)
(if applicable): Renewal for 2 terms of 1 year each
- Q: SECURITY DEPOSIT: \$1.70 per SF

ARTICLE II

DEMISED PREMISES

2.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, which Premises are situated within the Center as shown on Exhibits "A" and "B" hereof. The parties stipulate that for all purposes of this Lease that the square footage of the Premises is as stated in Article I (J) above and that all rent calculations hereunder are and shall be based on said square footage. This Lease is subject to and restricted by the terms, covenants, conditions, restrictions and easements herein set forth or recorded against the property upon which the Premises are located. Tenant covenants as a material part of the consideration of this Lease to keep and perform each and all of such terms, covenants, conditions, restrictions and easements to be kept and performed by it. The Tenant acknowledges and agrees that this Lease constitutes a lease of real property in a shopping center within the meaning of Section 365 (b)(3) of the Bankruptcy Code, 11 U.S.C. Sections 101 *et seq.* (the "Bankruptcy Code").

The use and occupation by Tenant of the Premises shall include the use in common with others entitled thereto of such common additional areas, including, without limitation, the parking areas, service roads, loading facilities, sidewalks and other facilities as may be designated and made available from time to time by the Landlord, subject however to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord. Said common additional areas are hereinafter referred to as the "Common Areas."

Landlord hereby reserves and excepts from the Premises (a) the exterior surfaces of exterior walls (not including the storefront), (b) the roof and any air rights or other rights, title or interest in any space above the ceiling, or ten feet above the finished floor, whichever is lower, of the Premises, except as required for the installation of Tenant's light fixtures or other equipment, fixtures and improvements required for the operation of Tenant's business, and (c) any right, title or interest to the concrete floor or any area below the surface of the concrete floor of the Premises, for such purposes as Landlord deems necessary, including, without limitation, installation, maintenance, use and replacement of pipes, ducts, conduits, wires, lines, systems and structural elements serving the Premises and/or other portions of the Center.

2.2 **Revisions of Site Plan.** The depiction of the Center and common areas on Exhibit "A" represents Landlord's current plans for the Center. Such depiction may be subsequently modified and does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to change (i) the size, location, use, type, number, design and dimension of the buildings and the common areas, (ii) the location and shape of the Premises and (iii) the identity and type of tenants.

ARTICLE III

TERM

3.1 Commencement of Term. For purposes of this Lease, a "Lease Year" shall be defined as that twelve (12) month period during the Primary Term or any Extension Term (hereinafter defined) commencing on the Commencement Date or the annual anniversary thereof, as may be applicable; provided, however, that if the Commencement Date is a day other than the first day of a calendar month, then the first Lease Year shall include that period of time from the Commencement Date up to, but not including, the first day of the next calendar month, and any subsequent Lease Year shall be the twelve (12) month period beginning on the first day of such month. The Lease shall be effective as of the date hereof and shall continue thereafter for the period of the Lease Term set forth in Article I (L) above. The term of this Lease, and Tenant's obligation to pay rent, shall commence on the Commencement Date set forth in Article I (M) above. Landlord agrees to deliver to Tenant, and Tenant agrees to accept from Landlord, possession of the Premises on the Commencement Date.

3.2 Options to Renew. Provided that as of the time Tenant gives notice of its intent to exercise the Renewal Option (as defined below) and the commencement of the Renewal Term (as defined below): (i) Tenant is not then in default, (ii) no condition then exists which with the passage of time or the giving of notice or both would constitute an event of default pursuant to this Lease and (iii) Tenant has continuously occupied the Premises for the permitted use during the Lease Term, Tenant (but not any assignee or sublessee) shall have the right and option (the "Renewal Option") to renew this Lease, by written notice delivered to Landlord no later than 180 days prior to the expiration of the Lease Term, for two (2) additional terms (the "Renewal Terms") of one (1) year each, under the same terms, conditions and covenants contained in the Lease, except that (a) no abatements or other concessions, if any, shall apply to the Renewal Terms; (b) Tenant shall have no further option to renew the Lease beyond the expiration of the Renewal Terms; and (c) all leasehold improvements within the Premises shall be provided in their then existing condition (or on an "as is" basis) at the time the Renewal Terms commence. Failure by Tenant to notify Landlord in writing of Tenant's election to exercise the Renewal Option herein granted within the time limits set forth for such exercise shall constitute a waiver of such Renewal Option. Upon exercise of the Renewal Option by Tenant and subject to the conditions set forth hereinabove, the Lease shall be extended for the period of the Renewal Terms without the necessity of the execution of any further instrument or document. Any termination of the Lease during the initial Lease Term shall terminate any and all then-existing renewal rights hereunder.

ARTICLE IV

RENT

4.1 Minimum Annual Rent. Tenant agrees to pay to Landlord, at the times and in the manner herein provided, the Minimum Annual Rent specified in Article I (N) above. Minimum Annual Rent shall be payable in advance in twelve (12) equal monthly installments on the first day of each calendar month, without prior notice, deduction, demand or offset, commencing upon the Commencement Date as provided in Article 3.1 above.

It is mutually intended and understood that said Annual Minimum Rent is a "net" rent to Landlord and that all taxes (except Landlord's personal income taxes, if applicable) attributable, or prorated to the Premises shall be paid in addition to said Annual Minimum Rent as hereinafter provided.

4.2 Additional Rent. Tenant shall pay to Landlord when due all sums of money required to be paid pursuant to this Article IV, Article VI, Article XIV, Article XVI, and all other sums of money or charges required to be paid by Tenant to Landlord under this Lease as Additional Rent, whether or not same is designated as Additional Rent. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible with the next installment of Minimum Annual Rent thereafter falling due. The foregoing notwithstanding, nothing herein contained shall be deemed to suspend or delay the payment by Tenant of any amount of money or charge at the time same becomes due and payable hereunder or limit any right or remedy of Landlord.

4.3 Security Deposit. Landlord hereby acknowledges that the Tenant has deposited with Landlord the Security Deposit set forth in Article I (Q) hereof. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of the Lease to be kept and performed by Tenant during the Lease Term. If Tenant defaults with respect to any provision of this Lease including, but not limited to, any provision relating to the payment of rent, Landlord may (but shall not be required to) use, retain and apply all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer as a result of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand thereof; deposit with Landlord in cash or a cashier's check an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall constitute a material default under this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease, the Security Deposit, or any balance thereof; shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following the expiration of the Lease Term or vacation of the Premises by Tenant, whichever event occurs last. In the event of a transfer of Landlord's interest in this Lease, the Security Deposit, or any portion thereof not previously applied, may be released by Landlord to Landlord's transferee and, if so released, Tenant agrees to look solely to

such transferee for proper application of the Security Deposit in accordance with the terms of this Section 4.2 and the return thereof in accordance herewith. The holder of a mortgage or the beneficiary of a deed of trust encumbering the property which includes the Premises shall not be responsible to Tenant for the return or application of any such Security Deposit, whether or not such holder or beneficiary succeeds to the position of Landlord hereunder, unless such Security Deposit shall have been actually received by such holder or beneficiary. Tenant acknowledges and agrees that in the event Tenant shall file a voluntary petition pursuant to the Bankruptcy Code or any successor thereto, or if an involuntary petition is filed against Tenant pursuant to the Bankruptcy Code or any successor thereto, then Landlord may apply the Security Deposit towards those obligations of Tenant to Landlord which accrued prior to the filing of such petition.

4.4 Taxes and Other Charges.

A. Government Property Lease Excise Tax. As required under A.R.S. § 42-6206, Tenant is hereby notified of its tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. §§ 42-6201, *et seq.* Tenant shall be responsible for any and all applicable property taxes and all applicable government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that may be imposed on the Premises or on any interest of Tenant in the Premises under this Lease. Tenant shall pay to the Maricopa County Treasurer, on or before December 1 of each year during the Lease Term, all amounts required to be paid with respect to the Premises pursuant to the GPLET provisions, at the rates established from time to time by the Arizona Department of Revenue pursuant to A.R.S. § 42-6203. Tenant shall also submit to the Maricopa County Treasurer a GPLET tax return in the form and as otherwise required by the provisions of A.R.S. § 42-6204(B). Tenant acknowledges that, pursuant to A.R.S. § 42-6206, failure by Lessee to pay such taxes after any applicable notice and opportunity to cure provided in this Lease is an event of default that could result in termination of the Lease and termination of Tenant's right to occupy the Premises. Tenant further acknowledges and agrees that Landlord shall be entitled to submit copies of this Lease (or an abstract thereof) to the Maricopa County Treasurer and the Arizona Department of Revenue, as required by A.R.S. § 42-6202(c).

B. Taxes on Rentals and other Sums Payable by Tenant. Tenant shall pay to Landlord, as Additional Rent, along with the Minimum Annual Rent otherwise payable hereunder, a sum equal to the aggregate of any municipal, city, county, state or federal excise, sales, use or privilege taxes legally levied or imposed, or hereinafter legally levied or imposed, during the term hereof or any extension or renewal hereof, against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or other income taxes imposed or levied against Landlord), which shall be paid monthly with the installments of rental as hereinabove provided together with Landlord's reasonable cost to appeal or otherwise protest these taxes.

C. Personal Property Taxes. Tenant shall pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment and all other personal property belonging to Tenant and placed on the Premises by Tenant together with any applicable excise taxes.

ARTICLE V
PERMISSIBLE USE

5.1 Permitted Uses.

A. Tenant shall use the Premises solely for the purposes specified in Article I (G) hereof, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes or under any other trade name whatsoever without the prior written consent of Landlord, which consent may be withheld in Landlord's sole, absolute and arbitrary discretion. Tenant further covenants and agrees that it will not use, nor suffer or permit any person or persons to use the Premises or any part thereof for any use or purpose contrary to this Lease, or in violation of the laws, rules and regulations of the United States of America, the State of Arizona, or the ordinances, regulations or requirements of the local, municipal or county governing bodies or any other lawful governmental or quasi-governmental authorities having jurisdiction over the Center, or in violation of any regulations of any insurance carrier providing insurance for the Premises or Center. Tenant acknowledges that Landlord shall be entitled to injunctive relief as a non-exclusive remedy for a breach of this Section 5.1.

B. Tenant agrees not to conduct or operate its business in any manner which could jeopardize or increase the rate of any fire or other insurance on the Premises or Center. Tenant further agrees not to use or permit the use of the Premises, the common areas or any portion or portions thereof, whether by Tenant or otherwise: (i) for the conduct of any offensive, noisy or dangerous trade, business manufacturing activity or occupation; (ii) for the maintenance of any nuisance or the conduct of any activity which violates public policy; (iii) for any activity which physically and substantially interferes with, the other property of Landlord or its business, or the property or business of any other occupant of the Center; or (iv) for any other unreasonable use of the Premises not compatible with the operation of a first-class retail and commercial shopping center. Tenant may not display portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls or roof or permanent doorways of the Premises, or in the hallways. Any sign placed or erected by Tenant and permitted hereunder shall be kept by the Tenant safe, secure and in conformance with the requirements of the local governing body having jurisdiction over the Center. Other than the antenna described in Exhibit "C", no aerial or antenna shall be erected on the roof or exterior walls of the Premises without, in each instance, the prior written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal by Landlord, Landlord's agents, and Landlord's employees, without notice at any time. In addition, Tenant agrees that it will not solicit in any manner in any of the automobile parking and common areas of the Center.

C. Other than common carrier and delivery services such as the U.S. Postal Service, UPS, or Federal Express, Tenant shall use its best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Premises prior to 10:00 A.M. of each day, and to prevent delivery trucks or other vehicles servicing the Premises from parking or standing in service areas for undue periods of time. Landlord reserves the right to further

reasonably regulate the activities of Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by such further reasonable rules and regulations which Landlord may impose from time to time.

D. In the event Tenant violates Section 5.1 (A) above, then Landlord may, but is not obligated to, elect to terminate this Lease as provided in Article XVII. Tenant shall remain liable for all accrued obligations which accrued prior to the date of such termination.

BY PLACING THEIR INITIALS AT THE END OF THIS SENTENCE, LANDLORD AND TENANT HEREBY CERTIFY THAT THIS SECTION 5.1 (D) HAS BEEN FREELY NEGOTIATED.



"LANDLORD"



"TENANT"

5.2 Prohibited Operations. No use, operation or conduct by Tenant shall be conducted or permitted within the Premises or the Center that is inconsistent with the operation of a first-class shopping center, as determined by Landlord in its sole discretion, including without limitation, the following:

(a) Tenant shall not commit or permit any waste or any unlawful, improper or offensive use of the Premises, or create or permit any public or private nuisance or act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Center.

(b) Tenant shall not permit the emission of any obnoxious odor, or store or use any noxious, toxic, caustic, or corrosive fuel or gas.

(c) Tenant shall not dump, incinerate or burn any trash or toxic waste in or about the Premises. All trash shall be kept in the type of container specified by Landlord, and shall be placed outside of the Premises and prepared for collection in the manner and at the times and places specified by Landlord. If Landlord provides or designates a service for picking up trash, Tenant shall use such service at Tenant's cost. If no such service is provided, Tenant shall arrange for and pay the cost of removal of any of Tenant's trash.

(d) Tenant shall not conduct or permit any auction, distress, bankruptcy or fire sale to be held on or about the Premises, whether such shall be voluntary or involuntary.

(e) Tenant shall not display merchandise, nor permit merchandise or other items to remain outside the Premises, without obtaining Landlord's prior written consent.

(f) Tenant shall keep all signs in or about the Premises suitably lighted during such hours as Landlord may reasonably require, including periods in addition to Tenant's business hours.

(g) Tenant shall not utilize any loud speakers, radios, phonographs, stereos, televisions or any other type of sound emitting device in or about the Premises that are audible outside the Premises, except for fire and burglar alarms, and shall not operate any machinery or equipment that, in Landlord's opinion, is harmful to the Premises or disturbing to other tenants.

(h) Tenant shall not operate or conduct a health spa, dance, aerobic or exercise studio of any kind, billiard room, pool hall, game or video arcade, discotheque, or other place of public amusement, training or education facility, massage parlor or "adult" only business of any type.

5.3 Compliance with Laws. Tenant, at its expense, shall comply with all existing and future rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities, the Board of Fire Underwriters, Landlord's and Tenant's insurance companies and other organizations that establish insurance rates pertaining to the Premises or the use of the common areas, including without limitation the installation of fire extinguishers, alarm systems, sprinkler systems or automatic dry chemical extinguishing systems.

5.4 Use of Walls. Landlord reserves the use of the exterior walls, the roof and the floor of the Premises and the right to install, maintain, use, repair and replace pipes, conduits, wire and other improvements through the Premises in locations and in a manner that will not materially interfere with Tenant's use of the Premises.

ARTICLE VI

UTILITIES

6.1 Utility Installation. Landlord agrees that it will cause to be made available to Tenant upon or adjacent to the Premises, at Landlord's cost, facilities for the delivery to the Premises of water, power, electricity, and telephone service, and for the removal of trash and sewage from the Premises.

6.2 Payment of Utility Cost. Tenant agrees, at its own expense, to pay for all water, power, gas and electric current and all other utilities used by Tenant on or from the Premises from and after the Commencement Date. In the event that any utilities are furnished to the Premises by Landlord, whether sub-metered or otherwise, then and in that event, Tenant shall pay Landlord for such utilities, but the rates charged to Tenant by Landlord shall not exceed those of the public utility company furnishing same to Landlord as if its services were being furnished directly to Tenant.

6.3 No Liability. Landlord shall not be liable to Tenant for the failure or interruption of utility service unless caused solely by Landlord's gross negligence and then only if such failure or interruption continues for two consecutive business days and has a material and adverse effect on the ability of Tenant to conduct its business operations within Premises. In

such event, Tenant's sole remedy shall be an abatement of the Minimum Annual Rent until the failure or interruption of the utility service is restored or until there is no longer a material or adverse effect on the ability of Tenant to conduct its business operations within the Premises.

ARTICLE VII

INDEMNITY AND INSURANCE

7.1 Indemnification and Waiver. Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon, or about the Premises or the Center from any cause, except for Landlord's gross negligence. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant's inventory, equipment and other personal property: (i) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring, water pipes, stairs, railings or walks; (ii) the disrepair of any equipment; (iii) the bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises; (iv) the backup of any sewer pipe or down spout; (v) the escape of steam or hot water; (vi) water, snow or ice; (vii) the falling of any fixture, plaster or stucco; (viii) broken glass; (ix) any act or omission of other occupants within the Center or of adjoining property; and (x) any unauthorized or criminal entry of third parties within the Premises or the Center, regardless of any breakdown, malfunction or insufficiency of any security measures provided by Landlord.

Tenant agrees that Landlord and Landlord's property manager, if any, shall not be liable for any damage or liability of any kind, or for any injury to or death of persons, or damage to property of Tenant or any other person during the Lease Term, from any cause whatsoever resulting from the use, occupation or enjoyment of the Premises or the operation of business therein or therefore by Tenant or any person holding under Tenant. Tenant hereby further agrees to defend, indemnify and save harmless Landlord for, from and against all liability whatsoever including, without limitation, liability for any real or claimed damage or injury and from all liens, claims and demands arising out of Tenant's use of the Premises and its facilities, any repairs or alterations which Tenant may make upon the Premises and any claims of any employee of Tenant against Landlord.

Tenant hereby acknowledges that the Premises, the Center and/or the common areas may be subject to various laws, rules and regulations, including without limitation, the Americans with Disabilities Act. Tenant further acknowledges that Landlord and the property manager of the Premises shall have no obligation to conduct any inspection or otherwise to determine whether the Premises, the Center or the common areas are in compliance with such laws. Tenant shall not be required to defend, indemnify, or save harmless the Landlord and shall not be liable for damage or injury occasioned by the gross negligence of Landlord and its designated agents, servants or employees. The foregoing obligation of Tenant to indemnify shall include all reasonable costs of legal counsel and investigation, together with other costs, expenses and liabilities incurred in connection with any and all claims of damage.

Notwithstanding any other provisions in this Lease, Tenant and Landlord each waive all rights of recovery against the other, and against the directors, partners, officers, employees, agents and representatives of the other, for loss of, or damage to, the waiving party, its property or the property of others under its control to the extent that, with respect to Landlord, Landlord receives insurance proceeds from any insurance policy in force at the time of such loss or damage and, with respect to Tenant, Tenant is required to maintain insurance pursuant to this Lease. Each party shall, upon obtaining the insurance policies required hereunder, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease and shall obtain, at their own expense, an appropriate waiver of subrogation endorsement from the insurer. If the Premises, the Center or Tenant's personal property are damaged or destroyed by fire, from vandalism, malicious mischief or sprinkler leakage or any other cause against which Tenant is required to maintain insurance pursuant to this Lease, Landlord shall not be liable to Tenant for any such damage or destruction. Tenant shall have no claim to or interest in any portion of the proceeds of any insurance maintained by Landlord.

7.2 Mutual Waiver of Subrogation. Landlord waives any and all rights of recovery against Tenant for or arising out of damage to or destruction of the Premises, from causes then included under standard fire and extended coverage insurance policies or endorsements, whether or not such damage or destruction shall have been caused by the negligence of Tenant, its agents, servants, employees, contractors, visitors or licensees, but only to the extent that Landlord's insurance policies then in force permit such waiver and only to the extent of the coverage provided by said policies. Tenant waives any and all rights of recovery against Landlord for or arising out of damage to or destruction of any property of Tenant, from causes then included under standard fire and extended coverage insurance policies or endorsements, whether or not caused by the negligence of Landlord, its agents, servants, employees, contractors, visitors or licensees, but only to the extent that Tenant's insurance policies then in force permit such waiver and only to the extent of the coverage provided by said policies. Landlord and Tenant represent that their present insurance policies now in force permit such waiver. If at any time during the term of this lease either party shall give no less than five (5) days prior notice to the other certifying that any insurance carrier which shall have issued any such policy covering any of the property above mentioned shall refuse to consent to the aforesaid waiver of subrogation, or if such carrier shall consent to such waiver only upon the payment of an additional premium (and such additional premium is not paid by the other party hereto), or such carrier shall revoke consent previously given or shall cancel or threaten to cancel any policy previously issued and then in force and effect, because of such waiver of subrogation, then, in any of such events, the waiver in this Article shall thereupon be of no further force or effect as to the loss, damage or destruction covered by such policy; provided, however, that if at any time thereafter such consent shall be obtained therefore without an additional premium from any existing or substitute insurance carrier, the waiver hereinabove provided for shall again become effective.

7.3 Tenant's Insurance Obligation. Tenant further covenants and agrees to carry and maintain during the entire Lease Term hereof, at Tenant's sole cost and expense, the following insurance coverages in the amounts and forms hereinafter specified:

A. **Public Liability and Property Damage.** A commercial general liability policy with limits of not less than One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, condition, use or occupancy thereof. Tenant shall also maintain umbrella liability insurance as excess and extended coverage for liability associated with the commercial general liability policy with limits of not less than Two Million Dollars (\$2,000,000) and in form and content acceptable to Landlord. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property contained in Section 7.1 hereof. Such policies shall include, without limitation, coverage for fire, explosion and water damage and legal liability coverage.

B. **Plate Glass.** Tenant shall be responsible for the maintenance of the plate glass on the Premises, but shall have the option either to insure the risk with commercial glass coverage or to self-insure same, which shall obligate Tenant to be personally liable for any claim, loss or damage related thereto, together with the cost of the repair of same. Tenant's responsibility for maintenance of the plate glass includes its replacement in the event repair of the glass would not restore the glass to its original condition at the time of installation.

C. **Workers' Compensation.** Tenant shall carry Workers' Compensation insurance in the required statutory amounts for all Tenant's employees.

7.4 Policy Requirements. All policies of insurance provided for herein shall be issued by insurance companies with a general policy holder's rating of A or better and a financial rating of not less than Class 10 as rated in the most current available Best's Insurance Reports and qualified to do business in the State of Arizona. All such policies shall name Landlord as an additional insured. Executed copies of such policies of insurance or original certificates thereof shall be delivered to Landlord within ten (10) days after delivery of possession of the Premises to Tenant and thereafter at least thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery under such policies for any loss occasioned to it, its servants, agents, or employees by reason of any act or omission of Tenant or its servants, agents, employees or contractors. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant pursuant to the terms of this Article VII so that at no time shall the insurance coverage required hereby lapse. All policies of insurance delivered to Landlord must contain a provision that the company writing such policy will give to Landlord at least thirty (30) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amount of or other material change of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry.

7.5 Increase in Coverage. In the event Landlord deems it necessary to increase the amounts or limits of insurance required to be carried by Tenant hereunder, Landlord may reasonably increase such amounts or limits of insurance, and Tenant shall increase the amounts

or limits of the insurance required to be carried by Tenant hereunder and shall provide Landlord with policies or original certificates indicating the increased amounts or limits as provided in Section 7.4 hereof.

7.6 Landlord's Insurance Obligations. Subject to reimbursement by Tenant as Additional Rent and as part of Center Operating Costs (as defined below) under Article 16, Landlord shall procure and maintain in force throughout the Lease Term:

(a) insurance on the Center in an amount not less than the full insurable value thereof, or the replacement cost as Landlord shall from time to time determine. The perils insured against shall include such additional perils as Landlord may from time to time determine;

(b) commercial general liability and property damage insurance with respect to the Center and all activities therein and uses thereof, coverage to include Landlord and those for whom Landlord is in law responsible. Such policy shall be written on a comprehensive basis with such limits or deductions for each occurrence or accident as Landlord requires from time to time;

(c) at Landlord's option, insurance against loss of insurable gross profits attributable to all perils insured against by Landlord or commonly insured against by prudent landlords, including, without limitation, loss of rent receivable from tenants in the Center in accordance with the provisions of existing leases in such amount or amounts as Landlord from time to time requires; and

(d) such other form or forms of insurance as Landlord determines from time to time, in amounts and for perils required by Landlord

Notwithstanding anything contained herein to the contrary, Landlord may provide all required insurance coverage hereunder through membership in the Arizona Municipal Risk Retention Pool so long as all of the foregoing risks are covered.

7.7 Insurance Use Restrictions. Tenant agrees that it will not at any time during the Lease Term carry any stock of goods or do or permit anything to be done in or about the Premises which will tend to increase the insurance rates upon the building of which the Premises are a part. Tenant agrees to pay to Landlord forthwith upon demand the amount of any increase in premiums for insurance that may be charged during the Lease Term on the amount of insurance to be carried by Landlord on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about the Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of Tenant. If Tenant installs upon the Premises any electrical equipment which constitutes an overload on the electrical lines of the Premises, Tenant shall at its own expense make whatever changes or provide whatever equipment safeguards are necessary to comply with the requirement of the insurance underwriters and any governmental authority having jurisdiction there over, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading.

7.8 Adequacy of Insurance. Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefore and all liability, if any with respect thereto.

ARTICLE VIII

TENANT'S ALTERATIONS

8.1 Alterations. Tenant shall not make any alteration, addition or improvement to the Premises, including, without limitation, the entrances and exits to the Premises, or to any fixture, wiring, plumbing, heating and air conditioning or other equipment therein without Landlord's prior written consent. Landlord shall have the right to impose any condition to such consent as Landlord deems desirable (including, without limitation, the imposition of bonds or use of a contractor designated or approved by Landlord). In no event shall Tenant make any alterations, additions or changes to the storefront, or the exterior walls or roof of the Premises, unless and until the written consent of Landlord shall first have been obtained, which consent may be withheld in Landlord's sole and arbitrary discretion. Tenant shall not make or cause to be made any penetration through the roof or demising walls of the Premises without the prior written consent of Landlord. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article.

8.2 Manner of Construction. All alterations, additions, or changes to be made to the Premises shall be under the supervision of a competent architect or competent licensed structural engineer satisfactory to Landlord and shall be made in accordance with plans and specifications with respect thereto, approved in writing by Landlord before the commencement of work. Failure of Landlord to disapprove any such plans and specifications within fifteen (15) days of submission shall be deemed its approval of same. Tenant, at Tenant's expense, shall be responsible for compliance with all laws, codes, rules and regulations of governmental agencies or authorities in connection with Tenant's alterations of the Premises. Landlord's consent to any proposed alterations shall create no responsibility or liability on the part of Landlord for their compliance with all laws, codes, rules and regulations of governmental agencies or authorities. Landlord shall be entitled to withhold its consent to a proposed alteration if such alteration to the Premises would require modifications or alternations to the Center or common areas. All work with respect to any alterations, additions or changes must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. Upon completion of any alterations, additions or changes, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of Maricopa County. Such alterations, additions or changes shall be considered as improvements and shall become an integral part of the Premises upon installation thereof and

shall not be removed by Tenant. All improvements to the Premises by Tenant including, but not limited to, light fixtures, floor coverings and partitions, but excluding trade fixtures, equipment used in Tenant's business, and signs, shall be deemed to be the property of Landlord upon installation thereof. All materials used in any alterations or changes to the Premises shall be new or like new quality and condition. Any such alterations, additions or changes shall be performed and done strictly in accordance with the laws and ordinances relating thereto. In performing the work of any such alterations, additions or changes, Tenant shall have the work performed in such manner as not to obstruct the access to the Premises of any other occupant to the Center. Tenant shall furnish Landlord with a copy of all applicable construction permits and plans so that Landlord may hold in its file a complete and accurate set of permits and plans for all alterations, additions and changes to the Premises and for all Tenant's Work on the Premises.

8.3 American's with Disabilities Act of 1990. Tenant shall fully comply with the provisions of the American's with Disabilities Act ("ADA"). It is Tenant's responsibility to provide access to all facilities under Tenant's control. Tenant, at Tenant's expense, shall be responsible for complying with non-structural requirements with regard to the interior of the Premises. Tenant shall not engage in any activity or allow any condition relating to the Leased Premises that would violate the ADA. Tenant shall notify Landlord immediately of any investigation, proceeding, notice or claim regarding a violation of the ADA relating to the Leased Premises. Tenant, at its' own expense, shall comply with all laws, rules, orders, ordinances, directives, regulations and requirements of federal, state, county and municipal authorities now in force which thereafter may be in force, which shall impose any duty upon Landlord with respect to the use, occupation or alteration of the Premises including, but not limited to, requirements of the "ADA". Tenant agrees to indemnify and hold Landlord harmless for, from and against any penalty, damage or charge imposed for any violation by Tenant, its' assignees, tenants, subtenants, licensees, agents and employees of any said requirements. Tenant shall provide Landlord with thirty (30) days written notice in the event Tenant desires to make any non-structural alteration, addition or change to the Premises.

ARTICLE IX

MECHANIC'S LIENS

9.1 Tenant's Lien Obligations. Tenant agrees that it will pay, or cause to be paid, all costs for work done by it or caused to be done by it on the Premises and that it will keep the Premises and the Center free and clear of all mechanic's liens and other liens for or arising from work done by or for Tenant or for persons claiming under it. Tenant expressly understands and agrees that any such work done by it or caused to be done by it is for Tenant's own account and not on behalf of, or as an agent of Landlord. NOTICE IS HEREBY GIVEN THAT NEITHER LANDLORD NOR LANDLORD'S INTEREST IN THE PREMISES OR THE CENTER SHALL BE LIABLE OR RESPONSIBLE TO PERSONS WHO FURNISH MATERIAL OR LABOR FOR OR IN CONNECTION WITH SUCH WORK. Landlord may, but is not required to, post on or about the Premises during any construction activity any reasonable Notice of Nonresponsibility in order to advise contractors, subcontractors and materialmen of Landlord's nonresponsibility for any costs or charges. Tenant agrees to, and shall indemnify and save Landlord free and harmless for, from and against, liability, loss, damage, costs, attorneys' fees,

and all other expenses on account of claims of contractors, subcontractors, laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under it.

9.2 Contest of Lien. If Tenant shall desire to contest any claim of lien, or if any such lien is actually filed against the Premises or Center, Tenant shall furnish Landlord adequate security for one hundred twenty-five percent (125%) of the value or one hundred twenty-five percent (125%) of the amount of the claim, plus estimated costs and interest or a bond of a responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant shall promptly pay and satisfy the same, together with any and all costs incurred by the lien claimant, and attorneys' fees, if so provided in the judgment.

9.3 Right to Cure. If Tenant shall be in default in the payment of any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have given the security to protect the property and Landlord against such claims of lien as hereinabove provided, Landlord may, but shall not be required to, pay such claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant agrees to pay the same promptly upon demand with interest the maximum lawful rate per annum from the date of payment thereof by Landlord.

9.4 Notice. Should any claim of lien for work done by or on behalf of Tenant be filed against the Premises or Center or any action affecting the title to such property be commenced, Tenant shall forthwith give Landlord notice thereof.

9.5 Inspection. Landlord or its representative shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to post and keep posted thereon notices as permitted or provided by law or which Landlord may deem to be proper for the protection of Landlord's interest in the Premises or the Center. Tenant shall, before the commencement of any work which might result in any such lien, give to Landlord a written notice of its intention to do so in sufficient time to enable Landlord to file and record such notices.

ARTICLE X

SIGNS

Tenant shall not affix or maintain upon the glass panes or supports of the show windows, or within sixty (60) inches of any window or upon the doors, roof or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items except those approved in writing in advance by Landlord as to the size, design, type, color, location, copy, nature and display qualities of such item. Individual Tenant signs which are illuminated shall be connected to individual Tenant's electrical meters. Lighting of Tenant signs shall be at Landlord's sole discretion. In addition, no advertising medium shall be utilized by Tenant the sound or effect of which extends beyond the Premises

including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area or on the structure of the Building, whether belonging to Tenant or to Tenant's agents or to any other person; except that this provision shall not apply to Tenant's service trucks; nor shall Tenant distribute, or cause to be distributed, in the Center any handbill or other advertising devices. In the event Tenant shall violate any provision of this Article X, Tenant hereby grants to Landlord the right to enter the Premises and correct such violation at Tenant's sole cost and expense. If any such violation shall occur in the common areas, Landlord shall have the immediate right to cure such violation, which right shall include, without limitation, removal of any and all unapproved signage.

ARTICLE XI

TRADE FIXTURES AND PERSONAL PROPERTY

11.1 Ownership. Any trade fixtures, signs and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of the Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Premises including, but not limited to, counters, shelving, showcases, mirrors and other movable personal property. Nothing contained in this Article shall be deemed or construed to permit or allow Tenant to remove any personal property, as to render the Premises unsuitable for conducting the type of business described in Article I(G), without the immediate replacement thereof with similar personal property of comparable or better quality. Tenant, at its expense, agrees to immediately repair any damage occasioned to the Premises by reason of removal of any such trade fixtures, signs, and other personal property. All trade fixtures, signs and other personal property installed in or attached to the Premises by Tenant shall be new or of new quality when so installed or attached. Tenant shall also reimburse Landlord for any costs incurred by Landlord in repairing any damage occasioned to the Center by reason of removal from the Premises of any trade fixtures, signs or personal property of Tenant.

11.2 Removal. If Tenant fails to remove any of its trade fixtures, furniture and other personal property upon expiration or the sooner termination of this Lease, Landlord may at Landlord's option retain all or any of such property, and title thereto shall thereupon automatically vest in Landlord, or Landlord may remove same from the Premises and dispose of all or any portion of such property, in which latter event Tenant shall, upon demand, pay to Landlord the actual expense of such removal and disposition together with the cost of repair of any and all damage to the Premises resulting from or caused by such removal.

ARTICLE XII

ASSIGNMENT, SUBLEASE, AND OTHER TRANSFERS

12.1 Restrictions. Tenant shall not transfer, assign, sublet, mortgage or otherwise hypothecate or encumber this Lease, or Tenant's interest in and to the Premises, nor enter into any management, license or concession agreements with respect to the Premises (hereinafter collectively a "Transfer"), without in each instance procuring Landlord's prior written consent, which consent may be given or withheld in Landlord's sole and absolute discretion. Any attempted or purported Transfer without Landlord's prior written consent shall be void and of no force and effect, shall not confer any interest or estate in the purported transferee, and shall at Landlord's sole, exclusive, and absolute discretion, entitle Landlord to terminate this Lease upon written notice to Tenant. A consent to one Transfer by Landlord shall not be deemed to be a consent to any subsequent Transfer to any other party.

12.2 Procedure for Transfer. Should Tenant desire to make a Transfer hereunder, Tenant shall, in each instance, give written notice of its intention to do so to Landlord not less than sixty (60) days prior to the effective date of such proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into a license or concession agreement, the proposed date thereof, and specifically identifying the proposed Transferee. Landlord shall, within thirty (30) days after its receipt of such notice of a proposed Transfer from Tenant, by mailing written notice to Tenant of its intention to do so (a) withhold consent to the Transfer pursuant to Section 12.1, (b) consent to such Transfer; or (c) terminate this Lease, such termination to be effective thirty (30) days after receipt of such notice by Tenant. No Transfer of this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any Guarantor of this Lease from liability under this Lease.

12.3 Required Documents. Each Transfer to which Landlord has consented shall be evidenced by a written instrument, the form and content of which is satisfactory to Landlord, executed by Tenant and Transferee under which the Transferee shall agree in writing for the benefit of Landlord to perform and to abide by all of the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant, including the payment of all amounts due or to become due under this Lease directly to Landlord and the obligation to use the Premises only for the purpose specified in Article I (G) hereof. In addition, Tenant shall reaffirm its obligations under this Lease and shall cause all Guarantors to reaffirm their respective obligations under any guaranty of the Lease. Tenant agrees to reimburse Landlord for Landlord's reasonable attorneys' and administrative fees incurred in conjunction with the processing of an documentation for each proposed Transfer, whether or not the Transfer is consummated.

12.4 Merger and Consolidation. If Tenant is a corporation or limited liability company which, under the current laws, rules or guidelines promulgated by the governmental body or agency having jurisdiction and authority to promulgate the same, is not deemed a public corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation, in the aggregate of more than twenty-five percent (25%) of the total outstanding

stock or interest in such corporation, limited liability company, association or partnership, shall be deemed a Transfer within the meaning and provisions of this Article and shall require Landlord's prior written consent.

12.5 Bankruptcy.

A. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord, and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under this Section 12.5 not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord.

B. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment, including the obligation to operate the business which Tenant is required to operate pursuant to Exhibit "B" hereof.

ARTICLE XIII

OPERATION OF TENANT'S BUSINESS

13.1 Continuous Operation. Tenant covenants and agrees that it will operate and conduct in 100% of the Premises, continuously and uninterruptedly during the Lease Term, the business which it is required to operate and conduct under the provisions hereof, except while the Premises are untenable by reason of fire or other unavoidable casualty, and that it will at all times keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures and have sufficient personnel to service and supply the demands and requirements of its customers.

13.2 Rules and Regulations. Tenant shall observe faithfully and comply with and shall cause its employees and invitees to observe faithfully and comply with reasonable rules and regulations governing the Center as may from time to time be promulgated and amended by Landlord.

ARTICLE XIV

REPAIRS AND MAINTENANCE

14.1 Tenant's Maintenance Obligations.

A. Tenant covenants, at all times during the Lease Term, at its sole cost and expense, and with due diligence and dispatch, to keep and maintain in good order and first class

condition, repair and appearance, as reasonably determined by Landlord, making all replacements required in connection therewith, the Premises and every part thereof, including, without limitation, the entire storefront, all glass and doors located within or in any perimeter wall of the Premises, all interior or exterior signs of Tenant, and all other improvements, fixtures, furnishings and appurtenances in and to the Premises, including, without limitation, lighting, wiring, plumbing and electrical fixtures, and all heating, ventilating, air conditioning and other equipment serving the Premises, of every nature and kind whether or not located within the Premises and whether furnished or installed by Landlord or Tenant. Any contractor or manufacturer warranties to the benefit of Landlord relating to lighting, wiring, plumbing, electrical fixtures, heating, ventilation and air conditioning and other equipment serving the Premises will be passed on to Tenant.

B. Landlord shall have the right to designate a contractor or contractors to periodically service, maintain and repair signs and all heating, ventilating and air conditioning equipment servicing premises located within the Center so long as the rates charged by such contractors are competitive with other similar contractors. Tenant covenants and agrees that it will contract with the contractor or contractors so designated by Landlord for such periodic service, maintenance and repairs, so long as in the event of an emergency, or if Landlord's contractor is not available within a reasonable time period to provide such service, maintenance or repairs, Tenant shall have the right to contract with its own contractor, provided that said contractor's work is performed in accordance with the provisions of Article 8 of this Lease and Tenant accepts responsibility for said contractor's work.

C. Tenant shall provide and maintain sanitary receptacles within the Premises in which to place any refuse or trash, and Tenant shall cause such refuse or trash to be removed from the area as often as required to maintain a sanitary condition, but in no event less often than twice weekly. Tenant shall sweep as needed and keep free of refuse the sidewalks and other areas immediately adjacent to the Premises.

14.2 Landlord's Maintenance Obligations.

A. Landlord shall operate the Center and, subject to the obligations of Tenant in this Lease, shall cause to be repaired and maintained the common areas and the structure of the Center (including roof), in a good and safe manner and condition in accordance with industry standards. Landlord shall keep and maintain in good order and first class condition, repair and appearance, making all replacements required in connection therewith, the Premises and every part thereof, including, without limitation, the entire storefront, all glass and doors located within or in any perimeter wall of the Premises, all interior or exterior signs of Tenant, and all other improvements, fixtures and appurtenances in and to the Premises, including, without limitation, lighting, wiring, plumbing and electrical fixtures, and all heating, ventilating, air conditioning and other equipment serving the Premises, of every nature and kind, whether or not located within the Premises and whether furnished or installed by Landlord or Tenant. Landlord, at its expense, shall also provide facilities maintenance and custodial services to the Premises.

B. Tenant shall promptly notify Landlord of any damage to or deficiency or defect in any part of the Premises or the Center. Notwithstanding the foregoing provisions of this Section 14.2, Landlord shall not be liable to Tenant for failure to make repairs as required herein unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete said repairs within thirty (30) days (or such longer period of time as may be reasonably required to complete said repair(s) which, due to its nature, cannot reasonably be remedied within thirty (30) days), following receipt of Tenant's written notification.

14.3 Tenant's Failure to Maintain. If Tenant refuses or neglects to maintain the Premises, or any portion thereof, in accordance with Section 14.1 above, Landlord shall have the right, upon giving Tenant written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, the cost of such work shall be paid by Tenant promptly upon receipt of bills therefore. Failure of Tenant to pay any of said charges within ten (10) days of receipt of bills therefore shall constitute a default hereunder. Upon any surrender of the Premises, Tenant shall deliver the Premises to Landlord, upon the expiration or earlier termination of this Lease, in good order, condition and state of repair, ordinary wear and tear excepted, and excepting such items of repair as may be Landlord's obligation hereunder.

14.4 Definition of Exterior Walls. As used in this Article, the expression "exterior walls" shall not be deemed to include storefront or storefronts, plate glass, window cases, or window frames, doors or door frames, security grilles or similar enclosures.

14.5 Right to Enter. Tenant agrees to accept the background clearances that the City of Buckeye performs on all city employees and city contractor employees with respect to Landlord's contractors and employees, and Tenant shall badge them appropriately so that Landlord's contractors and employees have access to the Premises and Center, without delay, for official business in the Premises. Tenant agrees to permit Landlord and its authorized representatives to enter the Premises at all times for the purpose of making emergency repairs and during usual business hours for the purpose of inspecting the same. Tenant further agrees that Landlord may go upon the Premises and make any necessary repairs thereto and perform any work therein which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, any fire rating bureau, or of any similar body, or that Landlord may deem necessary to prevent waste or deterioration in connection with the Premises if Tenant does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written demand from Landlord. Tenant shall also permit Landlord to enter the Premises, without notice, for the purpose of making emergency repairs to the Premises or the Center, and upon reasonable advance notice, for the purpose of making repairs to the portions of the Center adjacent to the Premises. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which, under provisions of this Lease, Tenant may be required to do, nor shall Landlord's failure to elect to perform such work constitute a waiver of Tenant's default. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby, to any abatement of rent, or to terminate this Lease.

ARTICLE XV

DAMAGE OR DESTRUCTION

15.1 Insured Casualty. In the event that the Premises are partially or totally destroyed by fire or any other peril covered by insurance maintained by Landlord, Landlord shall, within a period of one hundred eighty (180) days after the occurrence of such destruction, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect. Tenant shall not have any obligation to pay Minimum Annual Rent or Additional Rent before Landlord completes reconstruction or restoration of the Premises. In the event insurance proceeds are not sufficient to pay the cost of such reconstruction, or if the damage or destruction is due to the acts or omissions of Tenant, its agents, employees or contractors, or if Landlord is restricted by any governmental authority, Landlord may elect to either terminate this Lease or pay the cost of such reconstruction. Notwithstanding the foregoing, Tenant shall be obligated for the restoration of all of Tenant's leasehold improvements, trade fixtures and other personal property on the Premises.

15.2 Uninsured Casualty. In the event that the Premises are partially or totally destroyed as a result of any casualty or peril not covered by Landlord's insurance, Landlord may within a period of one hundred eighty (180) days after the occurrence of such destruction (i) commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or (ii) notify Tenant in writing that it elects not to so reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of such destruction. If Landlord elects to reconstruct and restore the Premises, Tenant shall be obligated for the restoration of all of Tenant's leasehold improvements, trade fixtures and other personal property on the Premises. Tenant shall not have any obligation to pay Minimum Annual Rent or Additional Rent before Landlord completes reconstruction or restoration of the Premises.

15.3 Damage to the Center. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Center or a partial destruction of the Center, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of the Center, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Center, in which event this Lease shall cease and terminate as of the date of such destruction. Tenant shall not have any obligation to pay Minimum Annual Rent or Additional Rent before Landlord completes reconstruction and restoration of the Premises.

15.4 Damage Near End of Term. Notwithstanding the foregoing, in the event that the Premises are partially or totally destroyed during the last eighteen (18) months of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease by giving written notice to the other of the exercise of such option within thirty (30) days after such destruction, in

which event this Lease shall cease and terminate as of the date of service of such notice. For the purposes of this Article, partial destruction shall be deemed to be a destruction to an extent of at least one-third (1/3) of the full replacement cost of the Premises as of the date of destruction.

15.5 Release of Liability. In the event of any termination of this Lease in accordance with this Article, the parties shall be released thereby without further obligation to the other party coincidental with the surrender of possession of the Premises to Landlord except for obligations which have theretofore accrued and are then unpaid or unperformed.

ARTICLE XVI

COMMON AREAS; CENTER OPERATING COSTS

16.1 Use of Common Areas. There shall be available in the Center certain areas and facilities to be used for automobile parking and for the general nonexclusive use, convenience and benefit of the customers and patrons of Tenant and of the other tenants, owners and occupants of the Center, which areas together with the service corridors and all other service facilities and equipment are referred to herein as "common areas." Except as otherwise specifically provided in this Lease, Tenant and its employees and invitees are authorized, empowered and privileged to use the common areas in common with other authorized persons, as determined by Landlord, during the Lease Term. The condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common areas shall not constitute a violation of this paragraph. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of the common areas. In connection therewith, Landlord reserves the right to grant any party the exclusive right to use designated portions of the common areas, in which case Tenant shall have no right to use such designated portions unless they have been designated for Tenant's exclusive use. Landlord shall, at all times, have sole and exclusive control of the common areas and may, at its option, from time to time, as Landlord deems advisable: (a) exclude and restrain any person from the use or occupancy thereof, (b) alter, improve, diminish, delete or add to portions of or otherwise change the common areas, including without limitation, changing the location, area, level, size and arrangement of driveways, entrances, exits, vehicular parking spaces or traffic flow, (c) designate restricted areas and employee parking areas, and (d) construct additional buildings and improvements. Landlord shall keep or cause to be kept said common areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof.

16.2 Center Operating Costs.

A. The term "Center Operating Costs" as used in this Lease shall mean the sum of all costs and expenses reasonably incurred by Landlord in operating, supervising, managing, administering, repairing, replacing, insuring and maintaining the Center and the common areas. Costs and expenses referred to herein shall include, without limitation or duplication, the total of the following:

- i. the total cost and expense of insuring the Center and portions thereof or property for which Landlord is legally liable from time to time, in such manner, for such risks and in such amounts as Landlord from time to time determines and shall include without limitation the cost of insurance carried by Landlord pursuant to Article 7;
- ii. the cost and expense of cleaning, gardening, landscaping, garbage and waste collection and disposal; the cost and expense of lighting, electricity and all utilities used in servicing the Center and/or the common areas; the cost to maintain utility, mechanical or maintenance rooms in the Center, and all costs paid or incurred by Landlord in installing energy conservation equipment and in complying with energy conservation laws and regulations;
- iii. the cost of security, policing and traffic control for the Center (but without obligation of Landlord to supply same);
- iv. the cost of managing the Center at a market rate, not to exceed five percent (5%) of the revenues generated to Landlord by the Center;
- v. all repairs and replacements of whatever nature or kind to, and maintenance and operation of the common areas and the systems, facilities, machinery and equipment serving the Center, including reasonable reserves therefore; provided, however, that if any such repair or replacement is deemed to be a "capital expense" pursuant to generally accepted accounting principles, then the cost of such repair or replacement shall be amortized over the useful life of such item and only the annual amortized installment shall be included with Center Operating Costs;
- vi. depreciation or amortization at generally accepted rates on (a) all fixtures, machinery, equipment and apparatus forming part of or serving the common areas (of the Center to the extent not recoverable from specific tenants) including, without limitation, maintenance, cleaning, and operating equipment, meters and heating, ventilating and air conditioning equipment serving the Center and (b) the cost of all repairs or replacements referred to in subparagraph (v) above, unless charged fully in the fiscal year of Landlord in which such fixtures, machinery, equipment or apparatus are acquired, or repairs and replacements are made, in accordance with Landlord's normal practice and as an expense in accordance with generally accepted accounting principles;
- vii. all business taxes and other taxes, if any, from time to time payable in respect of the common areas;

- viii. all irrigation district fees imposed against the Center; and
- ix. all other reasonable and customary costs and expenses not otherwise expressly excluded hereunder but attributable to the operation, supervision administration, maintenance or repair of the Center and the common areas.

Notwithstanding the foregoing, the phrase "Center Operating Costs" shall specifically exclude (1) repairs that are covered under warranties by manufacturers or materials incorporated into the Center; (2) depreciation and amortization, except that provided in subparagraphs (v) and (vi) above; (3) interest expenses; (4) expenses paid by any tenant directly to third parties or those for which Landlord is otherwise actually reimbursed by any third party or by insurance proceeds; (5) leasing commissions; and (6) salaries of employees of Landlord or its affiliates unless they are directly attributable to providing cleaning and maintenance services to the Center as provided for elsewhere in this Lease.

B. Tenant hereby agrees to pay to Landlord, as Additional Rent, a share of such Center Operating Costs, which share shall be computed by multiplying the amount of such Center Operating Costs by a fraction, the numerator of which shall be the square footage of the Premises as stated in Article I (J) and the denominator of which shall be the square footage of all buildings located within the Center ("Tenant's Proportionate Share"). Commencing on the Commencement Date and thereafter on the first (1st) day of each calendar month of the Lease Term, Tenant shall pay to Landlord one-twelfth (1/12) of the amount estimated by Landlord to be Tenant's Proportionate Share of such total annual Center Operating Costs for the ensuing calendar year or balance thereof. Landlord may adjust the Center Operating Costs charged to Tenant at the end of any calendar quarter on the basis of Landlord's experience and reasonably anticipated costs and a reasonable reserve for anticipated expenses (i.e. painting, HVAC, parking lot and roof repairs). However, any reserves collected shall be held until such repair is needed and not reimbursed on an annual basis. Within sixty (60) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired showing the total Center Operating Costs for the preceding calendar year, the amount of Tenant's Proportionate Share of such Center Operating Costs, and the payments made by Tenant with respect to such calendar year as set forth above. Notwithstanding Landlord's failure to timely provide said statement, said Center Operating Costs shall nonetheless be due and payable upon the furnishing of said statement to Tenant.

If Tenant's Proportionate Share of such Center Operating Costs exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of Landlord's statement. If Tenant's payments exceed Tenant's Proportionate Share of such Center Operating Costs, Tenant shall be entitled to credit the excess against payments for Center Operating Costs next thereafter to become due Landlord as set forth above. Failure of Tenant to pay any of the charges required by this Article to be paid when due shall constitute a material default under the terms of this Lease. Tenant's obligations under this Article 16 shall survive the termination of this Lease.

16.3 Common Area Rules and Regulations. Landlord shall have the right to establish and, from time to time, to change, alter and amend, and to enforce against Tenant and the other users of the common areas, such reasonable rules and regulations (including the exclusion of, or designation of area(s) for, employees' parking) as may be deemed necessary or advisable by Landlord for the proper and efficient operation and maintenance of the common areas. The rules and regulations herein provided for may include, without limitation, the hours during which the common areas shall be open for use.

ARTICLE XVII

TENANT'S DEFAULTS; REMEDIES

17.1 Events of Default. The occurrence of any of the following shall constitute a default and material breach of this Lease by Tenant:

A. Any failure by Tenant to pay any Minimum Annual Rent or Additional Rent or any other charge required to be paid under this Lease, or any part thereof, when due; or

B. Any failure by Tenant to observe or perform any other provision, covenant or condition of this lease to be observed or performed by Tenant where such failure continues for five (5) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a five (5) day period, Tenant shall not be deemed to be in default if it shall commence such cure within such period and thereafter diligently pursue such cure to completion, any such written notice shall be in lieu of, and not in addition to, any notice required under Arizona statutes.

C. The cessation of Tenant's business from the Premises or closure of the Premises for a period in excess of five (5) business days; or

D. Abandonment or vacation of the Premises by Tenant; or

E. A general assignment by Tenant or any Guarantor of this Lease for the benefit of creditors, or the filing by or against Tenant or any Guarantor of any proceeding under an insolvency or bankruptcy law including but not limited to the Bankruptcy Code, unless such proceeding is dismissed within ninety (90) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets within the Premises of Tenant or any Guarantor, unless possession is restored to Tenant or such Guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days.

17.2 Remedies. Upon a default by Tenant as defined in Section 17.1 above, Landlord (or Landlord's agent and employees), in addition to any other rights or remedies available to Landlord at law or in equity, including injunction, shall have the right without further demand or notice, to pursue any one or more of the following remedies:

A. Immediately or at any time thereafter re-enter and take possession of the Premises and remove Tenant, Tenant's agents, any subtenants, licensees, concessionaires or invitees and any or all of their property from the Premises. Re-entry and removal may only be effected through proceedings in a court of competent jurisdiction. Property removed from the Premises may be stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, but Landlord shall not be obligated to effect such removal. Landlord shall not be liable in any way in connection with any action taken under this subparagraph (A). No action taken, commenced or prosecuted by Landlord, no execution on any judgment and no act or forbearance on the part of Landlord in taking or accepting possession of the Premises shall be construed as an election to terminate this Lease unless Landlord expressly exercises such option in writing in accordance with subparagraph (D) below;

B. Prosecute and maintain an action or actions, as often as Landlord deems advisable, for collection of rents, other charges and damages as the same accrue, with or without entering into possession and without terminating this Lease. No judgment obtained shall constitute a merger or otherwise bar prosecution of, subsequent actions for rents and other charges and damages as they accrue;

C. Upon eviction and removal of Tenant, and Landlord taking possession of the Premises Landlord may from time to time, without termination of this Lease, for the account of Tenant, attempt to relet the Premises or any part thereof (but without obligation to do so) for such rental, terms and conditions (which may be for a term extending beyond the Term of this Lease) as Landlord, in its sole discretion, may deem advisable, with the right to make alterations and repairs to the Premises required for reletting. The rents received by Landlord from such reletting shall be applied, first, to the payment of any costs of reletting (as defined below) and second to the payment of rent due and unpaid hereunder. The residue, if any, shall be held by Landlord and applied in payment of future Minimum Annual Rent and Additional Rent as the same may become due and payable hereunder. If the rents received from such reletting during any month are insufficient to reimburse Landlord for any costs of reletting or rent due and payable, Tenant shall pay any deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach; and/or

D. Elect to terminate this Lease by written notice to Tenant. In the event of such termination, Tenant agrees to immediately surrender possession of the Premises. If Tenant fails or refuses to surrender the Premises, Landlord may take possession in accordance with subparagraph (A) above. Should Landlord terminate this Lease, Tenant shall have no further interest in this Lease or the Premises, and Landlord may recover from Tenant all damages Landlord may incur by reason of Tenant's default including, without limitation (1) the costs of reletting the Premises, (2) reasonable attorneys' fees, (3) the unamortized value of the Leasehold Improvement Allowance (as defined in Article I) and (4) the unamortized portion of any brokerage commission of fee paid by Landlord in connection with this Lease, all of which amounts shall be immediately due and payable at Landlord's election from Tenant to Landlord. In determining the amounts which would be payable by Tenant hereunder subsequent to default, the amounts for each year of the unexpired term shall be equal to the average Minimum Annual

Rent, Additional Rent, and expenses paid by Tenant from the commencement of the Lease Term to the time of default, or during the thirty-six (36) months immediately preceding default, whichever period is shorter.

17.3 Costs of Reletting. As used in this Article 17, "costs of reletting" shall include any reasonable costs necessary to take possession of the Premises and lease the Premises to another Tenant including, but not limited to:

- (a) legal costs and expenses of recovery of the Premises including reasonable court costs and attorneys' fees;
- (b) brokerage costs for leasing;
- (c) costs and expenses of alterations, repairs and improvements;
- (d) indebtedness other than Minimum Annual Rent due from Tenant to Landlord under this Lease;
- (e) costs of protecting the Premises; and
- (f) costs of removal and storage of Tenant's property.

All costs of reletting as stated in this Section 17.3 shall be consistent with marketplace conditions at the time of said reletting.

17.4 Acceptance of Surrender. No act or conduct of Landlord, whether consisting of reentry, taking possession or reletting of the Premises or obtaining appointment of a receiver or accepting the keys to the Premises, or otherwise, prior to the expiration of the Lease Term shall be deemed to be or constitute an acceptance by Landlord of the surrender of the Premises or an election to terminate this Lease unless Landlord exercises its election under subsection 17.2(D) of this Lease. Such acceptance or election by Landlord shall only be effected, and must be evidenced by written acknowledgment of acceptance of surrender or notice of election to terminate signed by Landlord.

17.5 Landlord's Right to Perform Tenant's Covenants. Subject to the provisions of Section 17.1(B) above, Tenant agrees that in the event it is due to render performance in accordance with any term or condition of this Lease and it fails to render such performance within five (5) days after written notification thereof is given, or immediately if required for the protection of the Premises, Landlord shall have the right, but not the obligation, to render such performance and to charge all costs and expenses incurred in connection therewith to Tenant, plus a sum equal to five percent (5%) thereof representing Landlord's overhead. All amounts so charged shall be Additional Rent due and payable immediately to Landlord upon presentment of a statement to Tenant indicating the amount and nature of such costs and expenses. Landlord shall have no liability to Tenant for any loss or damages resulting from any such action by

Landlord hereunder, and action by Landlord under this Section 17.5 shall not constitute a constructive or actual eviction or a breach of any covenant for quiet enjoyment of, or any other covenant of Landlord contained in this Lease.

17.6 Landlord's Remedies Cumulative. No remedy herein conferred upon Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. No delay or omission of Landlord to exercise any right or power arising from any default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein.

17.7 No Waiver. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by the Landlord. The waiver of Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Minimum Annual Rent or Additional Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular amounts so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount

ARTICLE XVIII

DEFAULT BY LANDLORD

Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than fifteen (15) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than fifteen (15) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such fifteen (15) day period and thereafter diligently prosecutes the same to completion. In no event shall Landlord be liable for or shall Tenant be entitled to special or consequential damages.

ARTICLE XIX

ATTORNEYS' FEES

In the event that either party shall institute any legal action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to pay to the prevailing party the reasonable attorneys' fees and costs actually incurred by the prevailing party. In the event that Landlord retains an attorney in order to enforce any of the covenants, conditions or obligations of this Lease, the attorneys' fees incurred in preparing any notice of Tenant's default hereunder shall be paid by Tenant regardless of whether any legal action or proceeding is commenced.

ARTICLE XX

EMINENT DOMAIN

20.1 Taking Resulting in Termination. In the event that all or substantially all of the Center shall be taken so as to render the Center not reasonably suitable for continuation of business, this Lease shall thereupon terminate as of the date possession shall be so taken. In the event that a portion of the Premises shall be taken under the power of eminent domain and the portion not so taken will not be reasonably adequate for the operation of Tenant's business, notwithstanding Landlord's performance of restoration as hereinafter provided, this Lease shall terminate as of the date possession of such portion is taken. If this Lease is terminated, all rent shall be paid up to the date that actual possession of the Premises, or a portion thereof, is taken by public authority, and Landlord shall make an equitable refund of any rent paid by Tenant in advance and not yet earned.

20.2 Partial Taking. In the event of any taking under the power of eminent domain which does not terminate this Lease as provided in Section 20.1, all of the provisions of this Lease, shall remain in full force and effect, except that the Minimum Annual Rent shall be reduced in the same proportion that the amount of floor area of the Premises taken bears to the floor area of the Premises immediately prior to such taking, and Landlord shall, to the extent of the condemnation award, at Landlord's own cost and expense, restore such part of the Premises as is not taken to as near its former condition as the circumstances will permit.

20.3 Award. All damages awarded for any such taking of the Center or the Premises under the power of eminent domain, whether for the whole or a part of the Center or the Premises shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation for diminution in value or the leasehold or for the fee of the Premises; provided, however, that nothing herein contained shall prevent Tenant from making claim for loss or damage to Tenant's trade fixtures and removable personal property. All amounts Tenant recovers for any such taking of its trade fixtures or removal of personal property shall belong to Tenant.

20.4 Transfer Under Threat of Taking. A voluntary sale by Landlord of all or any portion of the Center to a public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking by eminent domain.

ARTICLE XXI

SUBORDINATION TO FINANCING; ATTORNMENT

21.1 Subordination. This Lease is subject and subordinate to all recorded security interests in the Center and the Premises of earlier date and to all ground and/or other underlying leases of earlier dates, including sale and leaseback leases, mortgages and deeds of trust or other encumbrances which now affect the Center, the Premises or any portion thereof, together with all renewals, modifications, consolidations, replacements and extensions thereof; provided,

however, that if the lessor under any such lease or the holder or holders of any such mortgage, deed of trust or any encumbrance shall advise Landlord that it or they desire to require this Lease to be prior and superior thereto, upon written request of Landlord to Tenant, Tenant agrees to promptly execute, acknowledge and deliver any and all documents or instruments which Landlord or such lessor, holder or holders deem necessary or desirable for purposes therefore.

21.2 Future Encumbrance. Landlord shall have the right to cause this Lease to be and become and remain subject and subordinate to any and all mortgages or deeds of trust which may hereafter be executed covering the Center, the Premises, the real property thereunder or any portion thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advance, together with interest thereon, and subject to all the terms and provisions thereof; and Tenant agrees, within ten (10) days after Landlord's written request therefore, to execute, acknowledge and deliver upon request any and all documents or instruments requested by Landlord or necessary or proper to assure the subordination of this Lease to any such mortgages or deeds of trust.

21.3 Attornment. Notwithstanding anything to the contrary set forth in this Article, Tenant hereby agrees to attorn to any person, firm or corporation purchasing or otherwise acquiring Landlord's interest in the Center, the Premises, or the real property thereunder or any portion thereof, at any sale or other proceeding or pursuant to the exercise of any rights, powers, or remedies under such mortgages or deeds of trust as if such person, firm or corporation had been named as Landlord herein, it being intended hereby that if this Lease shall continue in full force and effect.

21.4 Estoppel Certificates.

A. Tenant covenants at any time and from time to time upon request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing within five (5) days following Landlord's request therefor either certifying to the following or noting any disagreement therewith and the reason(s) therefore: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications); (b) the dates to which the monthly installments of Minimum Annual Rent and other charges have been paid in advance, if any; (c) Tenant's acceptance and possession of the Premises; (d) the Commencement Date and/or Expiration Date of the Term; (e) the Minimum Annual Rent and Additional Rent provided under the Lease; (f) that Landlord is not in default under this Lease (or if Tenant claims such a default, the nature thereof); (g) that Tenant claims no offsets against the rent (or if Tenant claims such offsets, the amount thereof), and (h) such other information as Landlord or any prospective purchaser or lender shall reasonably require. It is intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgagee of the Premises or the Center.

B. Tenant's failure to deliver the statement required under Section 21.4(A) within such five (5) day period shall be conclusive upon Tenant (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) that there are no

uncured defaults in Landlord's performance; (c) that not more than one month's rent has been paid in advance; and (d) that all other matters to be certified by Tenant pursuant to Landlord's written request are true and correct as stated in said request, as of the date thereof

ARTICLE XXII

SALE OF PREMISES BY LANDLORD

In the event of any sale, exchange or other conveyance of Landlord's interest in the Center or any portion or portions thereof by Landlord and an assignment by Landlord of this Lease, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale, exchange or conveyance and assignment.

ARTICLE XXIII

SURRENDER OF PREMISES AND HOLDING OVER

23.1 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall quit and surrender the Premises, "broom clean," in good condition and repair (reasonable wear and tear excepted) together with all alterations, additions and improvements that may have been made, subject to the provisions of Section 23.4. If the Premises are not surrendered at the end of the Term, Tenant shall indemnify, defend and hold harmless Landlord for, from and against any loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding tenant based on such delay.

23.2 Holding Over. If Tenant or any successor in interest of Tenant should remain in possession of the Premises after the expiration of the Term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease, so far as applicable, except Minimum Annual Rent, which shall be subject to an automatic increase equal to one hundred fifty percent (150%) times the Minimum Annual Rent payable in the last Lease Year of the Term. Nothing contained herein shall be construed as Landlord's permission for Tenant to hold over.

23.3 No Merger. The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord shall not work a merger, and shall, at Landlord's option, terminate all or any subleases and subtenancies, or operate as an assignment to Landlord of all or any subleases or subtenancies. Landlord's option hereunder shall be exercised by notice to Tenant and all known sublessees and subtenants in the Premises or any part thereof.

23.4 Removal of Installations and Restoration by Tenant.

A. Every permanent or structural alteration, improvement, and fixture added or made by or on behalf of Tenant shall immediately become the property of Landlord upon construction or installation in the Premises, without compensation therefore to Tenant, and shall be surrendered by Tenant as part of the Premises, without disturbance or injury, upon expiration or earlier termination of this Lease, unless Landlord designates in writing that any such alteration, decoration, addition or improvement shall be removed (so long as such designation was made a condition to Landlord's original approval of the alteration, decoration, addition or improvement), in which event Tenant shall, at its sole cost and expense, remove any such item designated for removal by Landlord before Tenant vacates the Premises according to the terms of this Lease. Tenant may remove all items of business equipment and personal property attached to any wall of the Premises so long as the wall from which same are removed is repaired to its original condition, normal wear and tear excepted.

B. In the event of any injury or damage to the Premises or the Center resulting from the removal by Tenant of any alteration, decoration, addition, improvement, trade fixtures, equipment and furnishings, Tenant shall promptly repair the same, at its sole cost and expense, in a good and workmanlike manner, or if mutually agreed, shall pay to Landlord an amount sufficient for Landlord to repair same or to compensate Landlord for such injury or damage, together with a sum equal to five percent (5%) of such cost representing Landlord's overhead. At Landlord's option, any personal property or fixtures remaining upon the Premises after Tenant vacates the Premises shall be deemed abandoned and become the property of Landlord.

ARTICLE XXIV

NOTICES

Wherever in this Lease it shall be required or permitted that notice, approval, advice, consent or demand be given or served by either party to this Lease to or on the other, such notice, approval, advice, consent or demand shall be given or served, and shall not be deemed to have been duly given or served unless, in writing and forwarded by certified or registered mail or overnight carrier, addressed to the parties at the addresses listed in Article 1 hereof. Either party may change such address by written notice sent by certified or registered mail to the other.

ARTICLE XXV

QUIET ENJOYMENT

Landlord covenants that upon compliance by Tenant with all of the terms, covenants and conditions of this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord. This covenant shall not extend to any disturbance, act or condition caused or committed by any other tenant in the Center

and shall be subject to the provisions of this Lease. This Lease is subject to any covenants, conditions, restrictions or easements now or hereafter of record affecting all of any portion of the Center.

ARTICLE XXVI

CAPTIONS AND TERMS

26.1 Reference Only. The captions of Articles and Sections of this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease. Except as otherwise specifically stated in this Lease, the "Lease Term" shall include the original term and any extension, renewal or holdover thereof.

26.2 Parties. If more than one (1) person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, the words "Landlord" or "Tenant," wherever used in this Lease, are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with the performance of all the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter as the case may be, and the use of the singular shall include the plural, as the context may require.

ARTICLE XXVII

OBLIGATIONS OF SUCCESSORS

Each and all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, and except as otherwise specifically provided in this Lease, their respective heirs, executors, administrators, successors and assigns, subject, however, to all agreements, covenants, and restrictions contained elsewhere in this Lease with respect to the assignment, transfer, encumbering or subletting of all or any part of Tenant's interest in this Lease or the Premises.

ARTICLE XXVIII

MISCELLANEOUS PROVISIONS

28.1 Separability. It is agreed that if any provision of this Lease shall be determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect.

28.2 Warranty of Corporate Authority. If Tenant is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly formed corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State of Arizona; that all franchise and corporate taxes have been paid to date; and that all forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due on or before the execution of the Lease. Upon request from Landlord,

Tenant will provide a Corporate Resolution signed by the secretary of Corporation allowing the Corporation to enter into and be bound by the terms and conditions of this Lease agreement.

28.3 Merger. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting the Lease, and this Lease entirely supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understanding, if any, between the parties hereto with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any matter to the rental, use and occupancy of the Premises and shall be considered to be the only agreement between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except by written Lease Amendment signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to the representations is totally upon the representations and agreements contained in this Lease.

28.4 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord in the exercise of its sole business judgment shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Center.

28.5 Governing Law. The laws of the State of Arizona shall govern the validity, construction, performance and enforcement of this Lease. Should either party institute legal action to enforce any obligation contained herein, it is agreed that the proper venue of such suit or action shall be the county and judicial district in which the Center is located. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant but shall be interpreted in accordance with the general tenor of its language.

28.6 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire or other casualty, and other non-financial causes beyond the reasonable control of the party obligated to perform, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage, except the obligations, once accrued, imposed with regard to rental and other charges to be paid by Tenant pursuant to this Lease.

28.7 Cumulative Rights. The various rights, options, elections, powers and remedies contained in this Lease shall be construed as cumulative, and no one remedy shall be exclusive of any other remedy, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed.

28.8 Time. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

28.9 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent nor any other provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

28.10 Financial Statements. At any time during the Lease Term, Tenant shall, upon ten (10) days' prior written notice from Landlord, provide Landlord or any institutional lender which is negotiating with Landlord for interim, construction or permanent financing, with a confidential current financial statement (dated within ninety (90) days of the date Tenant receives Landlord's notice) and financial statements for each of the two (2) years prior to the current fiscal statement year. Such current statement shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

28.11 Real Estate Brokers. Landlord and Tenant represent and warrant that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and agree to indemnify the other against and hold it harmless from all liability arising from any such claim including, without limitation, the cost of attorneys' fees in connection therewith.

28.12 Interest. Tenant shall pay to Landlord when due all sums of money required to be paid pursuant to this Lease. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible with the next installment of Minimum Annual Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord. If Tenant shall fail to pay, when the same is due and payable, any rent or other charge, such unpaid amounts shall bear interest at twelve percent (12%) from the date due to the date of payment.

28.13 No Offer to Lease. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, occupancy of the Premises; and this document shall become effective and binding only upon execution and delivery hereof by Tenant and by Landlord (or, when duly authorized, by Landlord's agent or employee). No act or omission of any agent of Landlord or Landlord's broker, if any, shall alter, change or modify any of the provisions hereof.

28.14 Exculpation. Tenant shall look solely to the real estate that is the subject of this Lease and to no other assets of Landlord for satisfaction of any liability in respect of this Lease and will not seek recourse against Landlord nor against any of Landlord's personal assets, for such satisfaction. It is expressly understood and agreed that any money judgment resulting from

any default or other claim arising under this Lease against Landlord shall be satisfied only out of the net profit and other income actually received from the operation of the Center.

28.15 Hazardous Materials. Tenant represents and warrants that it and its agents, servants, employees, contractors, and anyone else acting on Tenant's behalf will not store, dispose, produce, use, transport or manufacture any toxic or hazardous waste or materials or petroleum products as defined or regulated by local, state or federal law on the Premises or any portion of the Center. Tenant shall give Landlord prompt written notice of the existence of, and/or Tenant's discovery of, the presence of or contamination of the Premises or the Center with hazardous or toxic waste and/or materials. In the event Tenant or any of its agents, servants, employees, contractors or anyone else acting on Tenant's behalf violates the foregoing provision by storing, disposing, producing, using, transporting or manufacturing any toxic or hazardous waste or materials in, on or about the Premises or Center, Tenant shall indemnify, defend and hold Landlord harmless from any damage, claim, injury, cost or liability arising therefrom or related thereto, including all costs of clean-up, attorneys' fees and court costs. The clean-up and disposal of such waste or materials shall be performed by Tenant at Tenant's sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances. The foregoing notwithstanding, Landlord in Landlord's sole and absolute discretion may elect, by written notice to Tenant, to perform the clean-up and disposal of such waste or materials from the Premises and/or the Center. In such event, Tenant shall pay to Landlord the actual cost of same upon receipt for Landlord or Landlord's written invoice therefore. The terms of the indemnification set forth in this Section 28.16 shall survive the expiration or termination of this Lease.

28.16 Expansion of Center. Landlord may at its election (but shall in no event be obligated to) expand the Center. Tenant acknowledges that such expansion, if and when it may occur, will involve barricading, materials storage, noise, the presence of workmen and equipment, rearrangement of parking areas, roadways and lighting facilities, and other inconveniences typically associated with construction. Tenant waives any claim or defense it may have against Landlord and any right of offset against or deductions from or any sum payable under this Lease based upon interruption of or interference with Tenant's conduct of business or inconvenience to its customers caused by such construction.

28.17 Waiver of Rights of Redemption. Tenant waives any and all rights of redemption granted under any present and future laws in the event Landlord obtains the right to possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

28.18 Right to Show Premises. During the last one hundred twenty (120) days of the Lease Term or upon earlier termination of this Lease, Landlord shall have the right to go upon the Premises upon one (1) business days' notice to Tenant to show same to prospective tenants or purchasers and to post appropriate signs.

28.19 No Waiver. No delay or omission of Landlord to exercise any right or power shall impair any such right or power, or shall be construed to be a waiver of any nonperformance by Tenant or an acquiescence therein. No waiver of any nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any sequent act of Tenant, whether or not similar to the act so consented to or approved.

28.20 No Third Party Rights. Except as expressly provided herein, no term of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause or action hereunder.

28.21 Joint and Several Obligations. If Tenant is constituted of two or more persons, corporations, or other entities, all agreements, covenants, representations and warranties of Tenant herein are the joint and several obligations of the entities constituting Tenant. If Tenant is husband and wife, the obligations hereunder shall extend individually to the sole and separate property of each as well as to their community property. Notice given to any one of the entities constituting Tenant shall be deemed as having been given to all such entities. The terms of this Section 28.21 shall not apply to any holding company or affiliated entity organized under the laws of foreign state or jurisdiction.

28.22 Center Name. Tenant shall not use the Center's name in any written or oral advertisement or public mailing without obtaining the prior written consent of the Landlord.

28.23 Waiver of Jury Trial. The parties to this agreement hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other to enforce this agreement, to collect damages for the breach of the agreement, or which in any other way arise out of, are connected to or are related to this agreement or the subject matter of this agreement, including but not limited to the use or occupancy of the premises or any claim of injury or damage arising out of the use or occupancy of the premises. Any such action shall be tried by the judge without a jury.

28.24 Accord and Satisfaction. Payment by Tenant or receipt by Landlord of a lesser amount than the Minimum Annual Rent and Additional Rent or other charges herein stipulated shall be deemed to be on account of the earliest due rent or other charge and no endorsement or statement on any check or any letter accompanying any payment by check shall be deemed an accord and satisfaction, and Landlord may accept and negotiate any such check without prejudice to Landlord's right to recover the balance of such rent or other charges or pursue any other remedy in this Lease.

28.25 Collection Fees. In the event that Landlord elects to utilize a collection agency or similar type of service to collect upon any charge or fee which Tenant has failed to pay under this Lease, regardless of whether said obligation has been reduced to a judgment, Tenant shall pay the fee or cost incurred in retaining said agency or service so that any amount collected shall be "net" to Landlord.

28.26 Cancellation. Notice is hereby given that the provisions of A.R.S. § 38-511 are applicable to this Lease and are hereby incorporated herein as though set forth in its entirety.

28.27 Non-Appropriation of Funds. Landlord is obligated only to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and Landlord shall be relieved of any subsequent obligation under this Lease. The parties agree that the Landlord has no obligation or duty of good faith to budget or appropriate the payment of Landlord's obligations set forth in this Lease in any budget in any fiscal year other than the fiscal year in which this Lease is executed and delivered. Landlord shall be the sole judge and authority in determining the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 28.27.

28.28 Homeland Security. Tenant represents, certifies and warrants to Landlord as follows: (a) Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; (b) Tenant is not engaged in this transaction, directly or indirectly, on behalf of any such person, group, entity or nation; and (c) none of the proceeds used to pay rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic event of default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord for, from and against any and all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

28.29 E-Verify Requirements. To the extent applicable under Arizona Revised Statutes §41-4401, Tenant warrants compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Arizona Revised Statute § 23-214(A). Tenant's failure to comply with such warranty shall be deemed a material breach of this Lease and may result in the termination of this Lease by Landlord.


28.30 Memorandum of Lease. Concurrently with the execution of this Lease, the parties shall complete, execute and acknowledge a Memorandum of Lease in the form required by A.R.S. § 42-6202(C). The Memorandum of Lease shall be recorded in the official records of Maricopa County, Arizona, within thirty (30) days of its execution.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREOF, Landlord and Tenant have duly executed and delivered this Lease as of the day and year first above written.

LANDLORD:

CITY OF BUCKEYE, an Arizona municipal corporation

By: 

Jackie A. Meck, Mayor

TENANT:

ARIZONA WATER COMPANY,
an Arizona corporation

By: 

Fredrick K. Schneider
Senior Vice-President
PA # 000579

ATTEST:

By: 

Lucinda J. Aja, City Clerk

APPROVED AS TO FORM:

Shiela B. Schmidt

Shiela Schmidt, City Attorney

EXHIBIT "A"
SITE PLAN



Water
Resources

Court

Library

Police

Fire

Proposed AZ Water Co.

Barber
Pizza
Dentist

504-21-0030

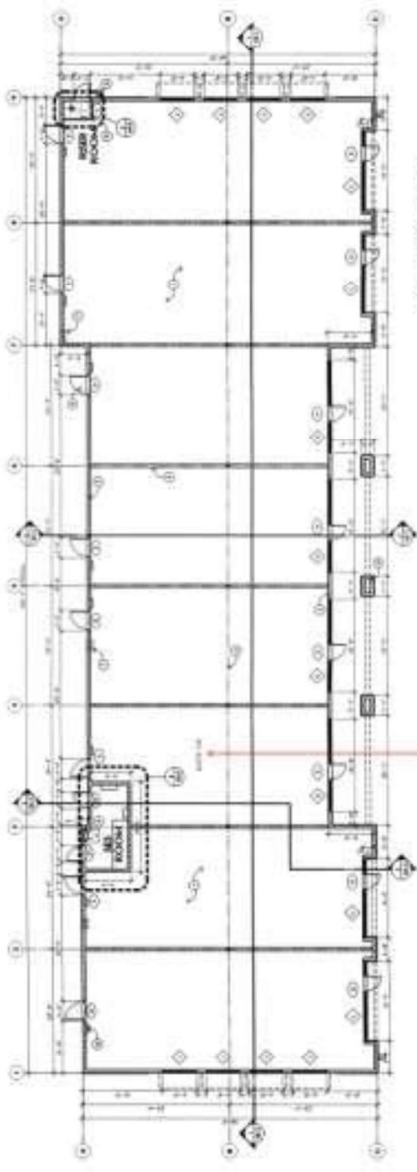
963.32'

929.70'

525.02'

56.35'

EXHIBIT "B"
FLOOR PLAN OF PREMISES



FLOOR PLAN
SECTION C

GENERAL NOTES

- 1. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.
- 2. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.
- 3. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.
- 4. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.
- 5. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.
- 6. REFER TO EXHIBIT C-20000 FOR GENERAL NOTES.

LEGEND

- 1. FLOOR PLAN
- 2. FLOOR PLAN
- 3. FLOOR PLAN
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- 6. FLOOR PLAN

LEGEND

- 1. FLOOR PLAN
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LEGEND

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LEGEND

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LEGEND

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EXHIBIT "C"

ANTENNA

SCADA Antenna

Radio antenna including all required cables, masts, and ancillary mounting equipment for Arizona Water Company's Supervisory Control and Data Acquisition (SCADA) system. Antenna height not to exceed 50-feet above the roof top. Antenna may be mounted on a mast anchored to the building structure or a self supporting tower as approved by the City. Antenna may be located on the roof above the Premises or ground mounted at the back (west) of the Premises as approved by the City.